IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

GERALD HENLEY, ET AL, PLAINTIFFS

v. CIVIL ACTION NO. 1:99CV390-A

MIKE EDLEMON, ET AL, DEFENDANTS

OPINION

Before the court is the motion of defendants Itawamba County, Mississippi and Coregis Insurance Company for summary judgment pursuant to FED. R. CIV. P. 56. The case *sub judice* involves two claims from two distinct groups of plaintiffs against the defendants, and each claim is filed pursuant to 42 U.S.C. § 1983. Plaintiffs Gerald Henley and Tonya Henley claim that defendant Mike Edlemon, while acting as an Itawamba County deputy sheriff, seized various items of personal property during a raid on the Henleys' home, and that several valuable items were never returned to them. Plaintiff Donald Duncan claims that Edlemon took several items of personal property from him and searched him without probable cause in violation of the Fourth Amendment. As to the Henleys' claim, defendants argue that a release signed by the Henleys upon the return of other items of their property precludes the instant claims. As to Duncan's claim, defendants argue that the statute of limitations has run. After having duly considered the motion, the court is of the opinion that it should be granted in part and denied in part.

As a preliminary matter, the court notes that one of the moving defendants, Coregis Insurance Company, was dismissed from the instant case on July 31, 2000. Accordingly, the instant motion is moot as to Coregis. Also, in accordance with the provisions of 28 U.S.C. § 636(c), the parties consented to have a United States Magistrate Judge conduct all proceedings in

this case, including an order for entry of a final judgment. Therefore, the undersigned has authority to render an opinion regarding these motions for summary judgment.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). "The moving party must show that if the evidentiary material of record were reduced to admissible evidence in court, it would be insufficient to permit the nonmoving party to carry its burden." *Beck v. Texas State Bd. of Dental Examiners*, 204 F.3d 629, 633 (5th Cir. 2000) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *cert. denied*, 484 U.S. 1066 (1988)). After a proper motion for summary judgment is made, the burden shifts to the non-movant to set forth specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby,* Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); *Beck*, 204 F.3d at 633; *Allen v. Rapides Parish School Bd.*, 204 F.3d 619, 621 (5th Cir. 2000); *Ragas v. Tennessee Gas Pipeline Company*, 136 F.3d 455, 458 (5th Cir. 1998). Substantive law determines what is material. *Anderson*, 477 U.S. at 249. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*, at 248. If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. *Celotex*, 477 U.S. at 327. "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 89 L. Ed. 2d 538 (1986); *Federal Savings and Loan, Inc. v. Krajl*, 968 F.2d 500, 503 (5th Cir. 1992). The facts are

reviewed drawing all reasonable inferences in favor of the non-moving party. *Allen*, 204 F.3d at 621; *PYCA Industries, Inc. v. Harrison County Waste Water Management Dist.*, 177 F.3d 351, 161 (5th Cir. 1999); *Banc One Capital Partners Corp. v. Kneipper*, 67 F.3d 1187, 1198 (5th Cir. 1995). However, this is so only when there is "an actual controversy, that is, when both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994); *see Edwards v. Your Credit, Inc.*, 148 F.3d 427, 432 (5th Cir. 1998). In the absence of proof, the court does not "assume that the nonmoving party could or would prove the necessary facts." *Little*, 37 F.3d at 1075 (emphasis omitted).

THE HENLEY CLAIM

As stated above, plaintiffs Gerald Henley and Tonya Henley claim that defendant Mike Edlemon, while acting as an Itawamba County deputy sheriff, seized various items of personal property during a raid on the Henleys' home and that several valuable items were never returned to them. On February 26, 1998 Edlemon conducted the search of the plaintiffs' home, seizing cash and several items of personal property belonging to the Henleys in the process. (Affidavit of Tonya Henley at 1, 3). On February 9, 1999 Tonya Henley met with Itawamba County Deputy Sheriff Chris Loden to retrieve property taken during the search; Loden told Henley that the Henleys would need to sign a release before the sheriff's department would return their property. (Henley Aff. at 3). The release, attached as exhibit C to the instant motion, reads "I, Gerald and Tonya Henley [sic], do hereby acknowledge that I have received the following items from the Itawamba County Sheriff's Dept. [sic], as is, and be receiving these items, fully release the Itawamba County Sheriff's Dept. [sic] of any and all present or future liabilities." Although several specific items of personal property were listed at the bottom of the page, Tonya Henley

states that other property taken from their home, including $7,500 in cash and jewelry, was not listed. (Henley Aff. at 3).

Defendants argue that the Henleys' claims in the instant case, filed to challenge the alleged taking of the property that was not listed on the release and not returned, are barred by the terms of the release agreement. Although Tonya Henley states in an affidavit that she understood the terms of release to apply only to the listed property and not to property allegedly taken by Edlemon and not returned, (Henley Aff. at 3), public policy favors the settlement of claims and the enforcement of releases, *Williams v. Phillips Petroleum Co.*, 23 F.3d 930, 935 (5th Cir. 1994). "[A] district court has inherent power to recognize, encourage, and when necessary enforce settlement agreements reached by the parties." *Bell v. Schexnayder*, 36 F.3d 447, 449 (5th Cir. 1994) (citation omitted). Under Mississippi law the initial question of whether a contract is ambiguous is one of law. *McDonald v. Mississippi Power Co.*, 732 So. 2d 893, 898 (Miss. 1999) (citations omitted).

> Where the intentions of the parties to an instrument appear clear and unambiguous from the instrument itself, the court should look solely to the instrument and give same effect as written. If, however, a careful reading of the instrument reveals it to be less than clear, definite, explicit, harmonious in all its provisions, and free from ambiguity throughout, the court is obligated to pursue the intent of the parties, and, to determine the intent, must resort to extrinsic aid.

Century 21 Deep South Properties, Ltd. v. Keys, 652 So. 2d 707, 716-717 (Miss. 1995) (quoting *Barnett v. Getty Oil Co.*, 266 So. 2d 581, 586 (Miss. 1972)); *see also Pfisterer v. Noble*, 320 So. 2d 383, 384 (Miss. 1975). Furthermore, disagreement between the parties about what the contract means does not, by itself, indicate that the contract is ambiguous as a matter of law. *Heritage Cablevision v. New Albany Elec. Power System of the City of New Albany, Mississippi*,

646 So. 2d 1305, 1313 (Miss. 1994) (citation omitted). In the opinion of the court, the release signed by the Henleys is not ambiguous. The release clearly states that the defendant sheriff's department would be released, without reservation, from "any and all present or future liabilities" in exchange for the return of the itemized property. In light of the clarity of the quoted language, the plaintiffs' argument that the release limited itself to the property listed thereon is not compelling. Additionally, there is no evidence before the court that the need to enforce the release is outweighed by considerations of public policy. *See Newton v. Rumery*, 480 U.S. 386 (1987). Accordingly, the court is of the opinion that the motion for summary judgment should be granted as to the Henleys' claims.

THE DUNCAN CLAIM

Duncan contends that on December 19, 1996 Edlemon arrested him and seized $4920 in cash, Duncan's truck, a pager, and four pounds of marijuana. Duncan maintains that at the time of the arrest he was sitting in the cab of his truck while the truck was parked in the yard of a friend. (Affidavit of Donald Duncan at 1). Duncan received a notice of declaration of forfeiture shortly after January 27, 1997, and according to the information contained in the notice Edlemon seized only $2830. (Duncan Aff. at 1-2). On January 25, 1999 in the Circuit Court of Itawamba County the charges against Duncan were dropped, and Duncan never regained any of the property seized. (Duncan Aff. at 2). Duncan's complaint contains two claims in relation to the December 19, 1996 arrest: (1) That Edlemon stole plaintiff's property including the $2090 dollars not reported on the forfeiture notice and (2) Edlemon detained and searched Duncan without probable cause in violation of the Fourth Amendment. As to both claims, defendants contend that the three-year statute of limitations period began to run on the date of Duncan's

arrest, December 19, 1996, and that because Duncan did not file the instant complaint until December 27, 1999 his claims are barred.

The statute of limitations for a suit brought under 42 U.S.C. § 1983 is determined by the general statute of limitations governing personal injuries in the forum state. *Piotrowski v. Houston*, 237 F.3d 567, 576 (5th Cir. 2001) (citation omitted). In Mississippi, the applicable period of time is three years. MISS. CODE ANN. § 15-1-49. Accordingly, if Duncan's claims did indeed accrue on the date of his arrest, summary judgment must be granted.

Accrual of a § 1983 claim is governed by federal law, and under federal law the period begins to run "the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." *Piotrowski*, 237 F.3d at 576 (citations omitted). Furthermore, a "plaintiff's awareness encompasses two elements: (1) The existence of the injury; and (2) causation, that is, the connection between the injury and the defendant's actions." *Id.* (citations omitted). Actual knowledge on the part of the plaintiff is not required "if the circumstances would lead a reasonable person to investigate further." *Id.* (citations omitted).

As to the claim that Edlemon detained and searched Duncan without probable cause in violation of the Fourth Amendment, clearly Duncan possessed sufficient information to know he had been injured on the date of the stop. Indeed, plaintiff does not suggest that he discovered any additional facts about the stop itself after December 19, 1996. Accordingly, Duncan's claim that Edlemon detained and searched him without probable cause will be dismissed as barred by the statute of limitations. However, as to Duncan's claim that Edlemon illegally seized his property, Duncan contends, and the court agrees, that he could not have known about the existence of this injury until his receipt of the declaration of forfeiture on January 27, 1997. Until

receipt of this notice, Duncan could have known neither that his property had been forfeited nor of the discrepancy between the amount of money taken from him and the amount of money reported. Because Duncan filed his complaint within three years of receiving the notice, his claim regarding Edlemon's theft of his property shall be allowed to proceed.

Pursuant to the foregoing reasoning, the court is of the opinion that defendants' motion for summary judgment should be granted as to the Henleys' claims and denied as to Duncan's claim that Edlemon stole his property. Furthermore, Duncan's claim that Edlemon stopped him without probable cause in violation of the Fourth Amendment should be dismissed with prejudice as barred by the applicable statute of limitations. A judgment in accordance with this opinion shall issue this day.

THIS the 20th day of March, 2001.

/s/

UNITED STATES MAGISTRATE JUDGE

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JUDGMENT

In accordance with the opinion of the court issued this day, it is,

ORDERED:

1. That defendants' motion for summary judgment is granted as to the Henleys' claims and denied as to Duncan's claim that Edlemon stole his property.

2. Duncan's claim that Edlemon detained and searched him without probable cause in violation of the Fourth Amendment is dismissed with prejudice as barred by the applicable statute of limitations.

SO ORDERED, this the 20th day of March, 2001.

/s/
UNITED STATES MAGISTRATE JUDGE